IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10627 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

BHANJI GOPAL KARCHHAD

Appearance:

MR PD BHATE, AGP, for Petitioner No. 1-2

MR SAMIR DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 06/08/2004

ORAL JUDGEMENT

1.1 By this petition the petitioner has challenged the judgement and award passed by the Labour Court, Junagadh, in Reference (LCJ) No.173/95 dated 18.11.1998.

2.1 The respondent herein was working in a Forest

Department as a Round Forester and in the year 1966-67 he was in Bokhra Block. By order dated 20.6.1967 the respondent was suspended and a chargesheet was filed against him. After inquiry the services of the respondent were dismissed.

2.2 Against the order of dismissal, the respondent filed Regular Civil Suit No.278/1969 in the court of Civil Judge, Senior Division, Junagadh. The aforesaid Civil Suit came to be dismissed against which the respondent filed Regular Civil Appeal No.240/1971 which also came to be dismissed. The respondent has also filed Review Application No.1/1995 which was rejected by order dated 20th June 1996.

2.3 The respondent thereafter approached the Labour Court, Junagadh, by way of Reference (LCJ) No.173/95. The Reference Court, by judgement and award dated 18.11.1998 directed the petitioners to reinstate the respondent on his original post with continuity of service and with 40% backwages and also to pay other consequential benefits. It is against the said judgement and award the present petition has been filed.

3.1 Heard the learned counsel for the respective parties. Learned counsel for the petitioners submitted that the Labour Court has committed an error in granting reinstatement after reaching the date of superannuation as the respondent had retired on 30th November 1982, whereas the Labour Court has passed an award on 18th November 1998. Mr. Bhate, therefore submitted that the Labour Court ought not to have entertained the reference after the workman reached the age of superannuation. Mr. Bhate further submitted that the Forest Department is not an industry. He further submitted that the respondent is covered by Bombay Civil Services Rules and the appropriate remedy is to go before the Tribunal.

4.1 Mr. Samir Dave, learned Advocate for the respondent submitted that no such contentions have been raised before the Labour Court and the Labour Court had no occasion to deal with the contention that the respondent workman had already retired.

4.2 Having gone through the record of the case, I fully agree with this contentions of Advocate for the respondent. The contentions with regard to retirement of the respondent workman and being covered by Bombay Civil Services Rules were not raised before the Labour Court. Therefore, it would not be appropriate to entertain such contentions in this petition. As regards the contention

that Forest Department is not an industry, this issue was not raised by the petitioner before the Labour Court.

4.3 However, the fact remains that by the time the judgement and award came to be passed, the workman had already retired. Therefore reinstatement of the respondent does not arise. Admittedly the workman had gone to wrong forum and therefore, I am of the opinion that the respondent workman is not entitled to backwages as awarded by the Labour Court. Looking to the overall facts and circumstances of the case, it would be just and proper to direct the petitioner to treat the respondent to have retired as government servant without any backwages and to pay to the respondent the retirement benefits, if available to the petitioner.

4.4 In the premises aforesaid, the petition is partly allowed. The respondent workman shall be treated to have retired as government servant without any backwages and he will be paid the retirement benefits as if he was in service as per the award. The judgement and award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. The retirement benefits shall be paid to the petitioner within six months from the date of receipt of the writ of this Court.

[K.S. JHAVERI, J.]

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